

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERNESTO OLIVO,

Plaintiff,

-against-

JANE OR JOHN DOE, *et al.*,

Defendants.

19-CV-9339 (CM)

TRANSFER ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, currently incarcerated at the Federal Medical Center in Rochester, Minnesota, brings this *pro se* action under the Federal Tort Claims Act (FTCA), alleging that Defendants violated his rights.¹ For the following reasons, this action is transferred to the United States District Court for the Eastern District of New York.

Under the FTCA, “[a]ny civil action on a tort claim against the United States under [the FTCA] may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.” 28 U.S.C. § 1402(b).

Plaintiff, who is incarcerated at the Federal Medical Center in Rochester, Minnesota, brings this action alleging that Defendants transported him, a paraplegic, in a non-wheelchair-accessible vehicle on multiple occasions. Because he did not state where these events took place or provide any facts suggesting that he resided, for venue purposes, in the District of Minnesota,² the Court directed him to amend his complaint to state facts showing that this District is the proper venue for this action.

¹ The Court granted Plaintiff’s application to proceed *in forma pauperis* on November 15, 2019. (ECF No. 7.)

² For venue purpose, “district courts in this Circuit have determined that where a prisoner is located does not necessarily establish residence.” *Santamaria v. Holder*, ECF 1:11-CV-1267, 38, 2012 WL 566073, at *9 (S.D.N.Y. Feb. 21, 2012), *report and recommendation adopted*, ECF 1:11-CV-1267, 39, 2012 WL 892180 (S.D.N.Y. Mar. 14, 2012).

On December 26, 2019, the Court received Plaintiff's amended complaint where he indicates that the events giving rise to his claims occurred at the Metropolitan Detention Center in Brooklyn, New York; he did not provide any additional facts regarding his residency.

As Brooklyn is located in Kings County, which is within the Eastern District of New York, the Court transfers the action to the United States District Court for the Eastern District of New York. *See* 28 U.S.C. § 1402(b).

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Clerk of Court is further directed to transfer this action to the United States District Court for Eastern District of New York. This order closes this case.

The Court certifies, pursuant to 28 U.S.C § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: January 7, 2020
New York, New York



COLLEEN McMAHON
Chief United States District Judge